

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
SCOTT PAPER COMPANY,)
)
Appellant,)
)
vs.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)
_____)

PCHB No. 380

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal from two civil penalties totaling \$500.00 for alleged emissions of sulfur dioxide resulting in an ambient concentration greater than 0.8 ppm for periods exceeding five minutes; having come on regularly for hearing before the Pollution Control Hearings Board on the 15th day of October, 1973, at Lacey, Washington; and appellant Scott Paper Company appearing through its attorney William H. Wilson and respondent Washington State Department of Ecology appearing through its attorney Wick Dufford; and Board members present at the hearing being W. A. Gissberg and Mary Ellen

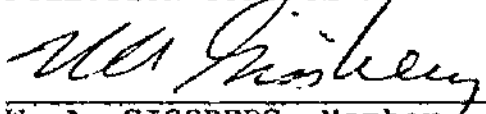
1 McCaffree; and the Board having heard the sworn testimony,
2 exhibits, records and files herein and arguments of counsel and
3 having entered on the 13th day of November, 1973, its proposed Findings
4 of Fact, Conclusions and Order; and the Board having served said
5 proposed Findings, Conclusions and Order upon all parties herein by
6 certified mail, return receipt requested and twenty days having
7 elapsed from said service; and


8 The Board have received exceptions to said proposed Findings,
9 Conclusions and Order from appellant Scott Paper Company and having
10 considered and denied same; and the Board being fully advised in the
11 premises; now therefore,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
13 Findings of Fact, Conclusions of Law and Order, dated the 13th day
14 of November, 1973, and incorporated by this reference herein and
15 attached hereto as Exhibit A, are adopted and hereby entered as the
16 Board's Final Findings of Fact, Conclusions of Law and Order herein.

17 DONE at Lacey, Washington this 2nd day of January, 1974.

18 POLLUTION CONTROL HEARINGS BOARD

19 
20 W. A. GISSBERG, Member

21 
22 MARY ELLEN McCAFFREE, Member

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25 FINAL FINDINGS OF FACT,
26 CONCLUSIONS OF LAW AND ORDER

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FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A hearing on this appeal came on before Board members, W. A. Gissberg (presiding officer) and Mary Ellen McCaffree, on October 15, 1973, in Lacey, Washington.

Appellant was represented by William H. Wilson of Anderson, Hunter, Dewell, Baker & Collins; respondent was represented by Wick Dufford. Having heard the evidence and oral argument and considered the briefs of the parties and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

On March 10 and 15, 1973, appellant, while blowing its digester in the operation of its sulfite pulp mill at Anacortes, Washington, caused or permitted emissions of sulfur dioxide resulting in an ambient concentration on each day greater than 0.8 p.p.m. for periods exceeding five minutes. Appellant's plant produces less than 150 tons of pulp per day and is governed by the emission standards of WAC 18.38.030(6).

II.

On May 14, 1973, without a prior hearing, respondent issued to appellant a "Notice of Penalty Incurred and Due" in the amount of \$500.00, from which appellant filed its timely notice of appeal with this Board.

III.

On December 18, 1972, pursuant to WAC 18-38-050, respondent issued to appellant a regulatory order setting forth a compliance schedule which required the operation of appellant's plant to be in compliance with WAC 18.38.030(6)(c) by February 24, 1973.

IV.

It is respondent's general policy not to release to the media any news concerning the imposition of civil penalties until after the penalty has been paid. However, a notice of civil penalty is a public record and available for inspection and copying. There is no evidence of any news publication of this civil penalty imposition from which we infer and find that there was none.

FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 V.

2 Although the violation of air pollution control regulations
3 can adversely affect the name and integrity of an industrial pollutor
4 there is no evidence of such an inadverse affect on appellant resulting
5 from the imposition of a civil penalty in this case.

6 VI.

7 Appellant has been afforded a hearing before this Board which
8 gave it:

- 9 1. Advance notice of the charges;
10 2. An opportunity to respond to the charges;
11 3. An opportunity to present witnesses under oath;
12 4. An opportunity to confront and cross-examine opposing witnesses
13 under oath; and
14 5. An opportunity to have a verbatim transcript.

15 From which comes the following

16 CONCLUSIONS OF LAW

17 I.

18 Appellant's sulfur dioxide emissions on March 10 and 15, 1973,
19 were a violation of WAC 18-38-030(6)(c) and RCW 70.94.431.

20 II.

21 The penalty assessment procedure of RCW 70.94.431 does not
22 constitute a denial of due process.

23 Accordingly, it is the Board's


24 ORDER


25 The appeal is denied and respondent's notice of penalty is
26 affirmed.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 13 day of Nov, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 
4 W. A. GISSBERG, Member

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6 
7 MARY ELLEN McCAFFREE, Member
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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER